

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 118 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DHIRAJLAL NARANDAS

Appearance:

Mr. L.R. Pujari, Addl. PUBLIC PROSECUTOR for Petitioner
Mr. Tirmizi, advocate for MR PM THAKKAR for the
respondent no. 1.
ABATED for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/07/97

ORAL JUDGEMENT

By means of filing this appeal under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned legality and propriety of the judgment and order dated October 27, 1989 rendered by the learned Chief Judicial Magistrate, Junagadh in Criminal case no. 3109 of 1985 acquitting the respondents of the offences punishable under section 20(c) of the Forward Contracts (Regulations) Act, 1952 (hereinafter referred to as "the Act"). In city of

Junagadh, there is a firm known as Prabhudas and Company. Dhirajlal Narandas, Prabhudas Muljibhai and Prabhudas Premjibhai were its partners and managing the affairs of the firm. Chandrapal R Trivedi while discharging duties as PSI, Special Squad, CID Crime received an information that the firm was making artificial heavy sales and purchases of groundnut, groundnut oil and oilseeds in forward markets with a view to making an undue profits. PSI Mr. Trivedi therefore, made necessary application to the learned Chief Judicial Magistrate, Junagadh on July 12,1984 to obtain search warrant and obtained search warrant accordingly. Pursuant to the search warrant, Mr. Trivedi raided the firm on July 18,1984 in presence of the panchas. At the time of raid, Mansukh Hansraj and Prabhudas Shantilal were present at the firm. The raiding party recovered a slip from Mansukh Hansraj wherein number of forward transactions were mentioned. Person of Prabhudas was also searched, but nothing incriminating was found. During the course of raid of the firm, 19 slips were found which were seized under a panchnama which was prepared in presence of the panchas. Incriminating slips which were seized during the raid were sent to the Director, Forward Market, Bombay for necessary opinion. The Director, Forward Market sent a report mentioning that on or about July 18,1984 the firm had entered into 10 unit options in groundnut. The accused had not obtained necessary permission enabling them to deal in groundnut by entering into forward transactions and had thus contravened provisions of section 19 of the Act of 1952 which is punishable under section 20(c) of the said Act.

On completion of investigation, the respondents were charge-sheeted for the alleged commission of the offence punishable under section 20(c) of the Act. The learned Magistrate framed necessary charge against the respondents at exh. 1. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution therefore, led oral as well as documentary evidence to substantiate the charge against the respondents. After recording of evidence of prosecution witnesses was over, the learned Magistrate questioned each of the respondents generally on the case and recorded statements under section 313 of the Code of Criminal Procedure, 1973. In further statements, each of respondents denied case of the prosecution, but did not lead any evidence in defence. On appreciation of evidence led by the prosecution, the learned Magistrate concluded that the prosecution has failed to prove that the respondents had entered into forward transactions in

groundnut. In view of this conclusion, the learned Magistrate acquitted the respondents by the impugned judgment giving rise to the present appeal.

2. It may be stated that during pendency and final hearing of the appeal, the respondent no.3, that is, Prabhudas Premji Luhana has expired and on his death, the appeal against him is treated as having abated vide order dated February 8, 1994. Mr. L.R.Pujari, learned A.P.P. has taken me through the entire evidence on record. Learned A.P.P. submitted that the evidence of P.S.I. Mr. C.R.Trivedi, read with the deposition of Valjibhai who was supervisor in Telephone Department indicates that the respondents were making artificial heavy sales and purchase in groundnut and had entered into forward transactions and therefore, the appeal deserves to be allowed. It was argued that the evidence of Police Inspector Antani read with the evidence of expert makes it abundantly clear that "Teji Mandi" transactions were entered into by the respondents in relation to groundnut and therefore, the acquittal of the respondents should be set aside and the respondents should be convicted under section 20(c) of the Act. Mr. P M Thakkar, learned Senior Counsel for the respondents pleaded that no reliable evidence worth the name has been adduced by the prosecution to indicate that the respondents or any of the respondents had entered into forward transactions for groundnut and therefore, well-founded acquittal should not be interfered with by the Court in the present appeal.

3. Mr. Trivedi, PSI, Special Squad, (CID) is examined at exh. 18. Though he has claimed that raid was carried out in presence of Panch Bhagwanji and Panch Ramesh Oza, none of the panch witnesses has supported him. Both the panch witnesses have not supported the prosecution case at all. Though they were permitted to be cross-examined by the learned PP, they have specifically stated that no slip bearing number of forward transactions was ever seized from Mansukhbhai nor other slips were found from the firm. In their evidence, they have claimed that they were made to sign prepared panchnama at the police station. Having regard to the nature of evidence led by the prosecution, it cannot be said that any error is committed by the learned Magistrate in holding that seizure of slip from Mansukhbhai and other slips lying in the firm is not proved by the prosecution. It is an admitted position that at the time of raid, none of the respondents was physically present at the firm. At the time of raid, Mansukhbhai Hansraj and Prabhudas Shantilal were present.

However, surprisingly, they have not been prosecuted at all under the provisions of the Act. PSI Trivedi in his cross-examination has admitted that Prabhudas and Company had permitted the respondent no.1 to use shop which was raided by him pursuant to search warrant. Under the circumstances, the prosecution of the respondent nos. 2 and 3 cannot be said to be well-founded at all. Jayantilal Modi, p.w. 7 exh. 81 who is the Research Officer in the office of the Director, Forward Contracts, Bombay has stated in his evidence that the report at exh. 84 as well as another report at exh. 89 are made on the assumption that they related to groundnut. It is an admitted position that in slips which were produced before the Court at exhs. D/1 to D/2, there is no mention of any commodity at all. In view of the unsatisfactory evidence led by the prosecution, it cannot be said that any error is committed by the learned Magistrate in acquitting the respondents.

4. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned Magistrate. As I am in general agreement with the view expressed by the learned Magistrate, I do not think it necessary either to reiterate the evidence of prosecution witnesses or to re-state reasons for acquittal given by the learned Magistrate and in my view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the case (i) Girija Nandini Devi and others vs. Bigendra Narain Chaudhari, AIR 1967, SC,1124 and (ii) State of Karnataka vs. Hema Reddy and another, AIR 1981 SC,1417. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Magistrate and convince me to take a view contrary to the one already taken by the learned Magistrate. Therefore, acquittal appeal deserves to be rejected.

5. For the foregoing reasons, the appeal fails and is dismissed. Muddamal be disposed of in terms

of directions given by the learned Magistrate in the
impugned judgment.

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